

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ION BAROI, et al.,)
Plaintiffs,) 2:09-CV-00671-PMP-GWF
v.)
PLATINUM CONDOMINIUM) ORDER
DEVELOPMENT, LLC; MARCUS)
HOTELS, INC.; and MARCUS)
MANAGEMENT LAS VEGAS, LLC,)
Defendants.)

Presently before the Court are Plaintiffs' Motion for Reconsideration of Ruling Dismissing Plaintiffs' State Securities Claims Based Upon Statute of Limitations (Doc. #238), filed on August 1, 2012, and Plaintiffs' Motion to Clarify and for Reconsideration Granting Partial Summary Judgment to Certain Plaintiffs (Doc. #241), filed on August 10, 2012. Defendants filed a consolidated Opposition (Doc. #245) on August 31, 2012. Plaintiffs filed Replies (Doc. #251, #252) on September 17, 2012.

The Court has set out the factual record in this case in prior Orders, and the Court will not repeat the facts here except where necessary. Plaintiffs' two Motions for Reconsideration focus on the portion of the Court's Order (Doc. #229) dated July 11, 2012, that held Plaintiffs' state law claims in count fifteen of the Third Amended Complaint (Doc. #89) for the sale of a non-registered security were time-barred. In their first Motion (Doc.

1 #238), Plaintiffs argue the Court's ruling ignored the distinction between an offer to sell
2 and a sale, both of which Nevada law prohibits for unregistered securities. Plaintiffs
3 contend the Court erroneously treated the 2004 Purchase Agreements as sales instead of
4 offers, and that the sales did not occur until the 2006 and 2007 closings. Plaintiffs also
5 argue the Court erred in its application of the discovery rule.

6 In their second Motion (Doc. #241), Plaintiffs again argue that the Purchase
7 Agreements are offers to sell, and the closings are sales. Plaintiffs thus contend that certain
8 Plaintiffs who did not close on their units until 2006 and 2007 are within the limitations
9 period, and the Court should not only reconsider its prior ruling against Plaintiffs, but
10 should enter summary judgment in favor of these particular Plaintiffs on the issue of
11 liability on their non-registration claims. Plaintiffs also contend Plaintiff Sandi James
12 ("James") should be awarded summary judgment because she signed Purchase Agreements
13 on two of her units in December 2006 and January 2007. Plaintiffs thus contend that even
14 if the Purchase Agreement is the relevant trigger for the limitations period, her non-
15 registration claims are timely as to these two units.

16 Defendants respond that the Court should not consider Plaintiffs' Motions
17 because Plaintiffs either already argued these points or could have argued them but did not
18 during the original summary judgment briefing. Defendants also argue that under Nevada
19 securities law, the Purchase Agreements were binding contracts to sell securities and
20 therefore the Purchase Agreements were sales, not offers to sell. Defendants thus contend
21 the limitations period properly runs from the date of the Purchase Agreements, not the
22 closings. As to the discovery rule, Defendants argue Plaintiffs discovered all facts
23 necessary to bring their claims at the time they signed the Purchase Agreements, and
24 Plaintiffs present no evidence as to when they discovered their non-registration claims.
25 Finally, as to Plaintiff James, Defendants argue that although she signed two Purchase
26 Agreements within the limitations period, she purchased other units more than two years

1 prior, and thus her non-registration claims are time-barred even for sales occurring within
2 the limitations period.

3 **I. DISCUSSION**

4 The Court “possesses the inherent procedural power to reconsider, rescind, or
5 modify an interlocutory order for cause seen by it to be sufficient” so long as the Court has
6 jurisdiction. City of L.A., Harbor Div. v. Santa Monica Baykeeper, 254 F.3d 882, 885 (9th
7 Cir. 2001) (emphasis and quotation omitted). “Reconsideration is appropriate if the district
8 court (1) is presented with newly discovered evidence, (2) committed clear error or the
9 initial decision was manifestly unjust, or (3) if there is an intervening change in controlling
10 law.” Sch. Dist. No. 1J, Multnomah Cnty., Or. v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir.
11 1993). “A motion for reconsideration is not an avenue to re-litigate the same issues and
12 arguments upon which the court already has ruled.” In re AgriBioTech, Inc., 319 B.R. 207,
13 209 (D. Nev. 2004).

14 **A. Discovery Rule**

15 Plaintiffs’ Motion for Reconsideration with respect to the discovery rule is a
16 rehash of prior arguments which the Court already has rejected. Even if Plaintiffs’ legal
17 argument is correct, Plaintiffs have failed to present evidence raising an issue of fact as to
18 when they discovered their claims and why Plaintiffs did not or could not have discovered
19 their non-registration claims within the limitations period. The Court therefore will deny
20 reconsideration based on the application of the discovery rule.

21 **B. Offer to Sell/Sale**

22 In the prior Order (Doc. #229), the Court held Plaintiffs’ non-registration claims
23 were time-barred:

24 Plaintiffs knew all facts giving rise to their failure to register claims no
25 later than when they signed their purchase agreements in 2006 and
26 2007. Plaintiffs allege in the Third Amended Complaint, and testified
at their depositions, that Defendants were marketing an investment.
The securities’ status as registered or unregistered was publicly

1 available information capable of discovery through reasonable care.
 2 See Nev. Rev. Stat. § 90.730. Plaintiffs therefore had all facts
 3 necessary to bring their registration claims at the time they signed their
 purchase agreements, even if they did not understand the legal
 significance of those facts until later.

4 (Order (Doc. #229) at 27.) Plaintiffs correctly point out the typographical error in the prior
 5 Order regarding the dates the Purchase Agreements were signed. It is undisputed, except as
 6 to Plaintiff James discussed below, that all Purchase Agreements were signed in 2004, not
 7 2006 and 2007.

8 Plaintiffs now move the Court to reconsider this ruling as to all Plaintiffs,
 9 contending that the Court erred by failing to distinguish between the signing of the Purchase
 10 Agreements, which Plaintiffs characterize as an offer to sell, and the closings, which
 11 Plaintiffs characterize as sales. Plaintiffs contend that because the Nevada statute imposes
 12 civil liability for both offers to sell and sales, the statute of limitations should run from the
 13 closings, which were in 2006 and 2007, and thus Plaintiffs' claims for sales of unregistered
 14 securities would be timely. Defendants respond that Plaintiffs could have raised this
 15 argument and presented their authorities in prior briefing but did not, and the Court
 16 therefore should not consider the argument on reconsideration. On the merits, Defendants
 17 contend the relevant statute defines a sale as a "contract to sell," and thus the Purchase
 18 Agreements were sales, not offers to sell.

19 In their original summary judgment motion, Defendants argued that the
 20 limitations period should run from the signing of the Purchase Agreements, as the Purchase
 21 Agreements constituted sales under Nevada Revised Statutes § 90.280. (Defs.' Mot. Partial
 22 Summ. J. (Doc. #160) at 35.) Plaintiffs responded to this argument in a footnote as follows:

23 Defendants cite N.R.S. 90.280's definition of "sale" for the proposition
 24 that the alleged securities violation takes place when the Purchase
 Agreement is signed. In reality, N.R.S. 90.280 defines "sale" to mean
 25 "every contract of sale, contract to sell, or other disposition, of a
 security or interest in a security for value." (emphasis added).
 26 Therefore, it is unclear that the alleged violations accrued as a matter
 of law on the date of signature of each of the Purchase Agreements.

1 Rather, the closing dates for the sales of the units, coupled with
 2 signatures of rental agreements, are also relevant facts for the trier of
 3 fact to consider in determining when Plaintiffs' causes of action
 accrued and whether Plaintiffs' claims are time-barred by a statute of
 limitations.

4 (Pls.' Opp'n to Defs.' Mot. Partial Summ. J. (Doc. #181) at 30-31 n.6 (internal citation
 5 omitted.) In the initial briefing, Plaintiffs did not cite any of the authority in their Motions
 6 for Reconsideration or argue that the Purchase Agreements were offers to sell, not sales.
 7 Plaintiffs could have raised the arguments they now assert and presented the supporting
 8 authority in the prior briefing, but did not do so. Plaintiffs do not identify any newly
 9 discovered evidence or change in the law which would explain why these arguments and
 10 authorities could not have been presented in the initial briefing.

11 Further, the Court's prior ruling was not clearly erroneous or manifestly unjust.
 12 The parties dispute the meaning of Nevada's securities laws. Nevada never has addressed
 13 the meaning of the statutory provisions at issue in this case. The Court therefore must
 14 predict how Nevada's highest court would resolve the issue. Giles v. Gen. Motors
 15 Acceptance Corp., 494 F.3d 865, 872 (9th Cir. 2007). "In answering that question, this
 16 court looks for 'guidance' to decisions by intermediate appellate courts of the state and by
 17 courts in other jurisdictions." Id. (quotation omitted).

18 Under Nevada law, statutory construction is a question of law for the Court.
 19 Richardson Constr., Inc. v. Clark Cnty. Sch. Dist., 156 P.3d 21, 23 (Nev. 2007). The Court
 20 begins with the statute's plain language, giving effect to any unambiguous language. Id. If
 21 the statutory language is ambiguous, the Court must "examine the statute in the context of
 22 the entire statutory scheme, reason, and public policy to effect a construction that reflects
 23 the Legislature's intent." Id. The Court construes the statute "as a whole" such that no
 24 words or phrases are rendered "superfluous" or "nugatory." Mangarella v. State, 17 P.3d
 25 989, 991 (Nev. 2001) (quotation omitted). The Court presumes that "every word, phrase,
 26

1 and provision in the enactment has meaning.” Id.

2 Nevada looks to federal securities laws to determine the meaning of its own
 3 securities laws where the two statutes use similar language. State v. Friend, 40 P.3d 436,
 4 439-40 (Nev. 2002). However, where Nevada law departs from federal law, the Court
 5 assumes the difference was deliberate. Lane v. Allstate Ins. Co., 969 P.2d 938, 940 (Nev.
 6 1998).

7 Nevada Revised Statutes § 90.460 makes it unlawful to “offer to sell or sell”
 8 unregistered, non-exempt securities in the State. Section 90.280 defines a “sale” as “every
 9 contract of sale, contract to sell, or other disposition, of a security or interest in a security
 10 for value,” and “[s]ell’ has a corresponding meaning.” An “offer to sell” means “every
 11 attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in
 12 a security for value.” Nev. Rev. Stat. § 90.280(1). Section 90.660(1) imposes civil liability
 13 on anyone who “offers or sells” a security in violation of § 90.460. A plaintiff must bring a
 14 claim under § 90.660 “within the earliest of 2 years after the discovery of the violation, 2
 15 years after discovery should have been made by the exercise of reasonable care, or 5 years
 16 after the act, omission or transaction constituting the violation.” Nev. Rev. Stat. § 90.670.

17 Under the plain language of Nevada’s securities laws, Plaintiffs’ Purchase
 18 Agreements are sales, not offers. The executed Purchase Agreements were binding
 19 contracts, fully enforceable by both sides. (Defs.’ Opp’n to Mot. Summ. J. (Doc. #151),
 20 Exs. 53-111.) They therefore are not offers, as Plaintiffs attempt to characterize them in the
 21 present briefing. Rather, the Purchase Agreements are contracts of sale or contracts to sell
 22 securities. Indeed, Plaintiffs asserted a breach of contract claim based on the 2004 Purchase
 23 Agreements in the Third Amended Complaint, and Plaintiffs therein alleged that the 2004
 24 Purchase Agreements were “valid and binding.” (Third Am. Compl. (Doc. #89) at 25-26.)
 25 The Court partially denied Defendants’ summary judgment motion on Plaintiffs’ breach of
 26 contract claim based on an alleged breach of the Purchase Agreements’ terms. (Order (Doc.

1 #230) at 10-14.) Plaintiffs' attempt to now characterize the Purchase Agreements as
2 "offers" is inconsistent with their prior position that the Purchase Agreements are binding
3 contracts. More importantly, characterizing binding executed sales contracts as offers is at
4 odds with the statutory language defining an offer as a solicitation or attempt to dispose of a
5 security.

6 Plaintiffs rely on United States v. Kormel, Inc., 230 F. Supp. 275 (D. Nev. 1964),
7 for the proposition that the limitations period should run from the closings because a sale is
8 not final until all payments are made and title is transferred. Kormel, however, is
9 distinguishable on numerous bases. Kormel interpreted provisions of the federal securities
10 laws which define both a violation and a sale differently than the Nevada securities laws.
11 Under the federal securities section at issue in Kormel, a violation consists of using the
12 mails or facilities of interstate commerce to defraud "in the offer or sale" of securities.
13 Kormel, 230 F. Supp. at 277-78; 15 U.S.C. § 77q. The Kormel court thus concluded that—

14 [r]epresentations made to an investor to induce him to continue
15 payments under an existing stock subscription contract are made 'in
16 the offer or sale' of the stock within the clear meaning of the Act and
17 the Order. A sale under the type of subscription contract here involved
18 was not complete until the whole purchase price was paid and upon
19 full payment, the company would deliver the shares purchased.

20 230 F. Supp. at 278.

21 The Kormel court was not analyzing when a sale occurred for purposes of
22 triggering the statute of limitations, and Kormel was analyzing a fraud claim, not a failure to
23 register claim. Moreover, the Nevada statutes do not define a non-registration violation as
24 one occurring "in the . . . sale" as the federal statute in Kormel did. Rather, § 90.460 makes
25 it a violation to "sell" an unregistered security. The federal statute at issue in Kormel thus
26 was broader in terms of what conduct might constitute fraud "in the . . . sale" under federal
securities law, rather than what constitutes a "sale" of an unregistered security under
Nevada law. Further, the federal statute at issue in Kormel defined a "sale" or "sell" to

1 “include every contract of sale or disposition of a security or interest in a security, for
 2 value.” 15 U.S.C. § 77b(a)(3). The federal statute does not contain the language in Nevada
 3 securities law that a “contract to sell” securities also constitutes a sale.

4 The other cases upon which Plaintiffs rely are similarly distinguishable. In
 5 Husted v. Amrep Corp., the court held the limitations period for a claim under 15 U.S.C.
 6 § 1703(b)(2) ran from post-sale misrepresentations aimed at inducing the buyer to continue
 7 to make payments on an interstate land sale. 429 F. Supp. 298, 307-09 (S.D.N.Y. 1977).
 8 At the time Husted was decided, § 1703(b)(2) prohibited misrepresentations “in selling or
 9 leasing . . . to obtain money or property.” Id. at 307 (quoting 15 U.S.C. § 1703(a)(2)(B)).
 10 The Husted court concluded that under this language, post-sale misrepresentations to
 11 encourage future payments on a contract were actionable violations, and the limitations
 12 period would run from the last such act. Id. at 307-09. In reaching its conclusion, the
 13 Husted court distinguished other sections of the relevant statute which made it unlawful “to
 14 sell or lease” by prohibited means. Id. at 307. The federal statutory section which Husted
 15 interpreted varies greatly from the non-registration provision in Nevada securities law, and
 16 thus Husted is of little interpretive guidance.

17 In re Los Angeles Land & Investments, Ltd. is similarly unhelpful. In that case,
 18 the court stated in its factual background that the seller of security interests in land who was
 19 subject to an injunction could not continue to service installment payments from buyers
 20 “because each monthly payment under the installment contract would constitute a further
 21 sale in violation of the Securities Act of 1933 since the sale of a security is not completed
 22 until the purchase price has been paid in full.” In re L.A. Land & Invs., Ltd., 282 F. Supp.
 23 448, 450 (D. Haw. 1968). However, the court was not analyzing the issue itself, was not
 24 addressing the statute of limitations, and had before it claims under a differently-worded
 25 federal statute. Id.

26 The court in SEC v. North American Finance Co. held subscription option

1 agreements were offers to sell where the subscriber's decision to purchase more shares
 2 under the subscription was "optional, and if he 'does not wish to exercise the subscription
 3 option or any balance thereon, it is cancelled at no further obligation to the subscriber.'" 214 F. Supp. 197, 202 (D. Ariz. 1959). That optional agreements to purchase securities are
 4 offers does not alter the binding nature of the Purchase Agreements in this case.

5 Finally, in United States v. Robertson, the court was tasked with determining
 6 whether the post-sale deposit of a check constituted use of the mails and the facilities of
 7 interstate commerce "in the sale" of securities under federal law. 181 F. Supp. 158, 161
 8 (S.D.N.Y. 1959). The Robertson court concluded that because payment was:

9 an essential element in consummating the sale transaction, the
 10 defendants' use of the mails or the facilities of interstate commerce in
 11 depositing the checks or in transmitting them for collection . . .
 12 constitutes a use of the mails or the facilities of interstate commerce 'in
 13 the sale' of securities within the meaning of [15 U.S.C.] section
 77q(a)(1).

14 Id. at 163. Because a federal securities violation does not occur under § 77q(a)(1) until
 15 there is a use of the mails or the facilities of interstate commerce "in the sale" of securities,
 16 interpreting when such a claim accrues sheds little light on when a claim for the "sale" of an
 17 unregistered security accrues for statute of limitations purposes under Nevada securities
 18 law. See Bryant v. Uland, 327 F. Supp. 439, 447 (D. Tex. 1971) (noting that federal courts
 19 have "found it necessary to look at later stages of the transaction, such as payment or
 20 delivery, to find a violation because all previous stages of the transactions in question were
 21 carried on intrastate and were not in violation of the Act. One cannot conclude from these
 22 cases that if each successive stage of the transaction violates the Act the statute of
 23 limitations expands concomitantly.").

24 The Purchase Agreements are executed and binding contracts and thus are
 25 "contracts of sale" under § 90.280. Alternatively, the Purchase Agreements are "contracts
 26 to sell" securities, a term that by its plain language implies some future conduct or event

1 will consummate the transaction. Consequently, to the extent Plaintiffs' Motions to
2 Reconsider are based on the difference between offers and sales, or that the Purchase
3 Agreements are offers and not sales, the Court will deny the Motions.

4 Although Plaintiffs' argument on reconsideration largely revolves around the
5 distinction between an offer to sell and a sale, the Court understands Plaintiffs to be arguing
6 that the limitations period should run from the last act consummating the sales transaction,
7 and that any such act can constitute a new violation as some "other disposition" of the
8 security under § 90.280's definition of a sale. Defendants argue that because the statute of
9 limitations is triggered within the earliest of two years after the discovery of the violation or
10 five years after the violation, the limitations period is not re-triggered by post-sales events
11 or conduct.

12 Nevada has not addressed whether the limitations period for a non-registration
13 claim runs from the initial sales contract only, or whether it can be triggered by post-sale
14 acts consummating the transaction, such as future payments or closing. However, other
15 courts which have interpreted similarly worded state statutes have concluded that the
16 limitations period runs from the moment the parties become irrevocably bound in the
17 transaction. See Wilson v. Al McCord Inc., 858 F.2d 1469, 1473 (10th Cir. 1988)
18 (interpreting Oklahoma's securities law defining "sale" the same as Nevada and holding
19 that the limitations period ran from the execution of the agreement even though final
20 completion costs were not paid until later); Cali-Ken Petroleum Co. v. Miller, 815 F. Supp.
21 216, 217-18 (W.D. Ky. 1993) (interpreting Kentucky's securities law defining "sale" the
22 same as Nevada and holding the limitations period ran from the moment the parties' rights
23 and duties became fixed); Adams v. Smith, 734 P.2d 843, 845-46 (Okl. Ct. App. 1986)
24 (interpreting Oklahoma's securities law defining "sale" the same as Nevada and holding
25 that limitations period ran from the date the parties entered a binding agreement even if the
26 agreement called for later installment payments). For example, the Oklahoma Court of

1 Appeals in Adams rejected the “continuing violation” theory whereby the limitations period
 2 would be re-triggered every time a party made an installment payment on an obligation
 3 already owed. 734 P.2d at 845-46. Rather, “[t]he violation which commences the running
 4 of the statute must be the first violation. Otherwise, the statute of limitations would be
 5 rendered meaningless.” Id. at 846 (quoting Bryant, 327 F. Supp. at 447) (emphasis
 6 omitted).¹

7 Based on this authority, as well as the language and structure of the Nevada
 8 securities law, the Court concludes Nevada likewise would hold that the “sale” is complete
 9 at the moment the parties are irrevocably bound to perform. The Court predicts Nevada
 10 also would hold that the first violation commences the running of the limitations period, and
 11 later events or acts related to the same sale, such as payments or the closing, do not
 12 constitute a new violation or re-trigger the limitations period. Section 90.670 requires a
 13 plaintiff to bring his or her claim “within the earliest” of two years after discovery of the
 14 violation or five years after the violation. The Nevada Legislature therefore intended
 15 plaintiffs in non-registration cases to bring their claims quickly. Allowing a plaintiff to
 16 extend or re-trigger the limitations period in relation to the same sale would undermine this
 17 legislative intent. The Court therefore will deny Plaintiffs’ Motions to Reconsider to the
 18 extent they rest on the argument that the limitations period should run from later payments
 19 or the closing.

20 **C. Plaintiff James**

21 In their original Motion for Partial Summary Judgment, Defendants argued that
 22 Plaintiff James’s claims for two of her units were barred even though she signed the

23
 24 ¹ Federal courts interpreting federal failure-to-register provisions have reached a similar
 25 conclusion. See Lubin v. Sybedon Corp., 688 F. Supp. 1425, 1451-52 (S.D. Cal. 1988); Holloway v.
Combined Equities, Inc., 628 F. Supp. 59, 60-61 (M.D. La. 1986); Rochambeau v. Brent Exploration,
Inc., 79 F.R.D. 381, 384 (D. Colo. 1978); Bryant, 327 F. Supp. at 446-47; see also Amoroso v. Sw.
Drilling Multi-Rig P’ship No. 1, 646 F. Supp. 141, 143, 145 (N.D. Cal. 1986)

1 Purchase Agreements related to those two units within the limitations period. (Defs.’
 2 Countermot. for Partial Summ. J. (Doc. #160) at 35.) Defendants argued that because she
 3 purchased other units for which the limitations period had expired, James could not re-
 4 trigger the limitations period by buying new units. (Id.) Plaintiffs did not respond to this
 5 argument during the original summary judgment briefing. Plaintiffs now move for
 6 reconsideration, arguing the limitations period could not run prior to the time a plaintiff
 7 purchases the security at issue.

8 Plaintiffs could and should have responded to Defendants’ argument regarding
 9 Plaintiff James in the original briefing. However, the Court concludes that declining to
 10 reconsider as to James would be manifestly unjust. As discussed above, Nevada would
 11 follow other courts in ruling that the relevant inquiry is when the plaintiff makes the
 12 investment decision and both parties are irrevocably bound to perform. Under this standard,
 13 the purchase of each condominium unit was a separate investment decision. James was not
 14 bound to purchase unit 1018 or unit 1604, and Defendants were not bound to sell those
 15 units to James, until the parties mutually agreed to enter into separate Purchase Agreements
 16 for each unit. Consequently, each Purchase Agreement is a sale which constitutes an
 17 independent violation for sale of an unregistered security. See Adams, 734 P.2d at 846
 18 (“Each individual letter agreement was a separate sale and had no relation to succeeding
 19 agreements.”).

20 Defendants’ position that a plaintiff’s claim could be barred as untimely before it
 21 even accrues is at odds with the statutory language. Section 90.670 states the limitations
 22 period runs from the discovery of the violation or from the act constituting the violation,
 23 and under § 90.460 the violation is the sale of the unregistered security. The limitations
 24 period thus runs from each violation, i.e., each sale, and not from the plaintiff’s discovery
 25 that the security was unregistered as a general matter.

26 Moreover, it would be anomalous to hold the limitations period for a plaintiff’s

1 claim expired before the claim even accrued absent an unambiguous statutory command to
 2 do so. Under Nevada law, the limitations period generally runs from “the day the cause of
 3 action accrued,” and a “cause of action ‘accrues’ when a suit may be maintained thereon.”
 4 Clark v. Robison, 944 P.2d 788, 789 (Nev. 1997). Plaintiff James could not have brought
 5 suit on her purchases of units 1018 and 1604 until the parties executed the Purchase
 6 Agreements related to those units in December 2006 and January 2007. (Defs.’ Mot. Partial
 7 Summ. J., Exs. 61-62.) Under § 90.670 and the Court’s prior ruling, James had two years
 8 from the date the Purchase Agreements were executed in relation to these two units in
 9 which to bring suit. Due to tolling of the limitations period by a related class action filed on
 10 December 5, 2008, James’s non-registration claims were timely when added to the Third
 11 Amended Complaint (Doc. #89) on October 18, 2010. (Pls.’ Mot. for Recons. (Doc. #241),
 12 Exs. 18-19); see also Crown, Cork & Seal Co. v. Parker, 462 U.S. 345, 350 (1983); Am.
 13 Pipe & Constr. Co. v. Utah, 414 U.S. 538, 553-54 (1974).

14 Thus, despite Plaintiffs’ failure to respond on this issue in the initial briefing,
 15 Defendants failed to meet their initial burden under Federal Rule of Civil Procedure 56 to
 16 show they are entitled to judgment as a matter of law. Failure to reconsider therefore would
 17 be manifestly unjust, and the Court will grant Plaintiffs’ Motion for Reconsideration (Doc.
 18 #241) on Plaintiff James’s non-registration claims contained in count fifteen of the Third
 19 Amended Complaint as to units 1018 and 1604. Additionally, because the Court already
 20 ruled that Defendants sold unregistered securities, the Court will grant summary judgment
 21 in Plaintiff James’s favor as to liability on the purchases of units 1018 and 1604 based on
 22 Defendants’ sale of an unregistered security in relation to these two units.

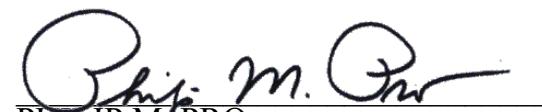
23 **II. CONCLUSION**

24 IT IS THEREFORE ORDERED that Plaintiffs’ Motion for Reconsideration of
 25 Ruling Dismissing Plaintiffs’ State Securities Claims Based Upon the Statute of Limitations
 26 (Doc. #238) is hereby DENIED.

1 IT IS FURTHER ORDERED that Plaintiffs' Motion to Clarify and for
2 Reconsideration Granting Partial Summary Judgment to Certain Plaintiffs (Doc. #241) is
3 hereby GRANTED in part and DENIED in part. The Motion is granted in that the Court
4 hereby amends its prior Order (Doc. #229) to grant partial summary judgment in Plaintiff
5 Sandi James's favor and against Defendants on the issue of liability for count fifteen of the
6 Third Amended Complaint (Doc. #89) with respect to Plaintiff Sandi James's purchases of
7 units 1018 and 1604 only. The Motion is denied in all other respects.

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9 DATED: October 1, 2012


10 PHILIP M. GREW
11 United States District Judge

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